

SEP - 5 1990

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA

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In Re: ) Case No. C-B-90-30350  
 ) Chapter 13

JERRY FLOYD, and  
MILDRED C. FLOYD,

Debtors.

JUDGEMENT ENTERED ON SEP 5 1990

**ORDER DENYING DEBTORS' MOTION FOR ADDITIONAL SANCTIONS  
AGAINST ALLEN USED CARS AND BEN ALLEN**

This matter is before the court on the debtors' Motion for Additional Sanctions against Allen Used Cars and Ben Allen ("Allen"). The court has concluded that the actions of Allen, although perhaps disrespectful of the debtors' counsel, did not violate the Bankruptcy Code or any Order of this court. Consequently, the debtors' Motion should be denied, but Allen must reimburse debtors' counsel for certain costs incurred as a result of his actions.

**BACKGROUND**

Allen Used Cars by its proprietor, Ben Allen, sold the debtors an automobile on time and took in exchange a note and security interest in the car. The debtors defaulted on their monthly payments to Allen, and while he was "hunting the car", the debtors filed their Chapter 13 bankruptcy petition. Allen repossessed the car after having been advised of the debtors' bankruptcy and, initially, refused to return the car after demand. As a result of that conduct, the debtors filed a motion for sanctions against Allen for violation of the automatic stay, 11 U.S.C. § 362. After Allen sought legal advice, he settled

that motion by a Consent Order which required him to reduce the amount of his secured claim and pay \$500 attorney's fees to debtors' attorney. The Consent Order provided that:

... the Respondent(s) pay within twenty (20) days of the date of the entry of this order the sum of \$ 500.00 in legal fees to the Law Offices of O. Max Gardner III, P.A., counsel of record for the debtor(s) in this matter.

Against the advice of his attorney, Allen proceeded to pay the debtors' attorney's fees in pennies -- a total of 50,000 of them.<sup>1</sup> Allen obtained \$500.00 worth of pennies from his bank in the form of ten boxes of 50 cent rolls. They were wheeled to his car from the bank on a handtruck and Allen took them to his office at Allen Used Cars. He originally planned to deliver loose pennies to debtors' counsel "in five gallon buckets" but ultimately rejected that plan. Instead, over a period of eleven days, Allen had an employee make five deliveries of pennies to debtors' counsel's office. Each delivery was of 10,000 pennies (\$100) contained in two boxes of rolled pennies. But, prior to delivery Allen slit the side of each paper roll of pennies (with the result that each time a slit roll was picked up, it fell apart and scattered the pennies).

After the first delivery of pennies, debtors' counsel wrote Allen's counsel threatening to seek \$10,000 in sanctions for Allen's actions. Allen never received notice of this letter. Debtors' counsel's office accepted each installment delivery of

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<sup>1</sup> Allen's counsel has argued that Allen had satisfied the Consent Order "down to the penny."

pennies. On the first delivery and -- even after debtor's counsel's letter -- on the four subsequent deliveries his office gave Allen a receipt for the payment which included a printed "Thank You."

Allen's explanation for paying the attorney's fees in pennies was that he was "frustrated" by having to make the payment, even though he had agreed to it. Allen's explanation for making installment deliveries of pennies was that his employee had had open-heart surgery and could only carry two boxes of pennies at a time.<sup>2</sup>

#### DISCUSSION

Allen's actions were prompted by one motivation only. Whether categorized as "harassment" as debtors' counsel contends or "getting his goat" or "pulling his chain," Allen admitted that his motivation and his acts were essentially retaliatory in nature. However, the court has concluded that Allen's actions do not amount to a violation of the automatic stay, a violation of any Order of the court or contempt of the court in general.

First, Allen's actions cannot amount to a violation of the automatic stay because they were not directed at the debtors and did not affect the debtors in any way prohibited by § 362.

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<sup>2</sup> With respect to the need for deliveries over an eleven day period, the court asked Allen's employee whether he needed a day or so off to recuperate after each delivery or whether he was just "savoring" the experience. The witness did not appear to understand the question.

Rather, Allen's actions were solely directed at and solely affected only the debtors' lawyer who enjoyed no protection by the automatic stay. 11 U.S.C. § 362(a).

Second, Allen's actions violated no Order of this court. The Order awarding sanctions against Allen merely specified the amount of attorney's fees due debtors' counsel. It did not provide for any particular method of payments; nor did it in any way limit the manner in which Allen could pay the fee award. No other Order of this court restricts the method of paying Orders or Judgments.<sup>3</sup> So, Allen's payment of the fee award in pennies violated no Order of this court.

Third, Allen's actions showed no disrespect for or other contempt of this court. Again, his actions were directed solely at debtors' attorney, and were not in violation of any Order of this court or otherwise contemptuous. Allen's use of pennies -- rolled, loose or in slit rolls -- appears to be lawful in all respects. See, 31 U.S.C. § 5103. Those payments were accepted by debtors' counsel who, even after threatening action against Allen, continued to accept the installment deliveries of slit rolls of pennies and issue receipts for them along with a "Thank You."

Finally, the court cannot find any "bad faith" on Allen's part. Although motivated by retaliatory instincts, Allen believed that his actions were lawful -- and apparently they were.

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<sup>3</sup> Contemporaneous with entry of this Order, the court has entered a general Order restricting the method of payment of Orders and Judgments.

Consequently, no objective or subjective "bad faith" can spring from his actions.

For the foregoing reasons the court has concluded that Allen should not be subject to sanctions on account of his paying the attorney's fees required by the Consent Order in pennies. However, the intent of that Consent Order was to require net payment of \$500 attorney's fees. Consequently, Allen should reimburse debtor's counsel for any reasonable expenses incurred in transporting and negotiating the pennies delivered by Allen. Such reimbursement should be made by check or like instrument!

#### CONCLUSION

It is therefore ORDERED that:

1. The debtors' motion for additional sanctions is denied;  
and

2. Ben Allen shall pay to debtors' counsel (by check or like instrument) the reasonable costs of transporting and negotiating the pennies delivered to debtors' counsel. Debtors' counsel is instructed to submit a statement for such costs to Allen's counsel. Thereafter Allen shall have 15 days to pay the amount claimed or file an objection to the statement of costs and have a hearing scheduled thereon.

This the 5th day of September, 1990.

  
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George R. Hodges  
United States Bankruptcy Judge